

APPEAL NO. 041393
FILED AUGUST 2, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 20, 2004. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable repetitive trauma injury with a date of _____, and that she did not have disability because she did not sustain a compensable injury. In her appeal, the claimant argues that those determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (self-insured) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable repetitive trauma injury with a date of _____. The claimant had the burden of proof on that issue. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The injury issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n. v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In this instance, there was conflicting evidence on the issue of the nature and duration of the data entry activities performed by the claimant in her job. The hearing officer determined that the evidence did not establish that the claimant sustained a compensable injury. She simply was not persuaded that the claimant sustained her burden of proving that she developed bilateral carpal tunnel syndrome (CTS) as a result of performing repetitive, physically traumatic activities at work. The hearing officer was acting within her province as the fact finder in so finding. Nothing in our review of the record demonstrates that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse the injury determination on appeal. Pool, *supra*; Cain, *supra*.

The existence of a compensable injury is a prerequisite to finding disability. Section 401.011(16). Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that she did not have disability.

Finally, we note that the hearing officer did not err in excluding Claimant's Exhibits Nos. 8 and 9 because they were not timely exchanged and because the doctor who provided those reports was not listed in the claimant's interrogatory answers as a person with knowledge of relevant facts. The claimant did not comply with the discovery requirements of the 1989 Act and the hearing officer was not persuaded that good cause existed for her failure to do so. Our review of the record does not demonstrate that the hearing officer abused her discretion in excluding the exhibits. In her appeal, the claimant asks that the Appeals Panel "not penalize me for my attorney's omission." An attorney employed to represent a claimant before the Texas Workers' Compensation Commission (Commission) is the agent of the claimant; thus, the attorney's action or inaction is, therefore, attributable to the client. Texas Workers' Compensation Commission Appeal No. 93605, decided August 26, 1993.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**JG
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge